

REMARKS/ARGUMENTS

Favorable reconsideration of this Application, as presently amended and in light of the following discussion, is respectfully requested.

This Amendment is in response to the Final Office Action mailed on December 29, 2004. Claims 10-35 are pending in this Application; and Claims 10-24 stand rejected. Claim 17 is amended and new Claims 25-35 are submitted by the present Amendment.

In the outstanding Office Action, Claims 10, 14, 16-20, 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bolnberger et al. (U.S. Patent No. 4,718,415, hereinafter “the ‘415 patent”) in view of Teder (U.S. Patent No. 3,633,705, hereinafter “Teder”). Claims 11 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘415 patent in view of Teder and in further view of Bolnberger et al. (U.S. Patent No. 5,503,141, hereinafter “the ‘141 patent”). Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘415 patent in view of Teder and in further view of Cappa et al. (U.S. Patent No. 4,961,420, hereinafter “Cappa”). Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘415 patent in view of Teder and in further view of Ansite et al. (U.S. Patent No. 3,910,269, hereinafter “Ansite”). Claims 21 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘415 patent in view of Teder and in further view of Berman (U.S. Patent No. 3,314,424, hereinafter “Berman”).

Applicants acknowledge with appreciation the courtesy of the interview granted to Applicants’ representative on February 24, 2005. An amendment to Claim 17 as herein presented was proposed, and arguments, as hereinafter developed, were presented.

During the interview, as discussed in the Amendment filed on September 30, 2004, it was reiterated that there is no motivation to combine the ‘415 patent with Teder because the ‘415 patent teaches away from the need for further noise reduction, which was the motivation to combine the references proposed in the outstanding Office Action. In addition, it was also

explained that, if a first part of the valve carrier 2 of the '415 patent is the housing recited in Claim 17 and a second part of it is the recited arm extending from the housing, as asserted in the outstanding Office Action, including the hand-written illustration on a figure reproduced from the '415 patent, the inlet passage 3 of that reference cannot be the body recited in Claim 23 because the inlet passage 3 is not mounted in the housing. In addition, Claim 17 recites the feature of a exhalation port pierced through the flexible cap. In the '415 patent, the valve carrier 2 is the element that pierces through the rubber body 1. An agreement with respect to the claims was reached during the personal interview, as noted by Examiner Darwin Erez in the interview summary (form PTOL-413), as follows:

- (1) The introduction of the housing element into the claims now requires an exhalation valve that is separate from the housing;
- (2) The rejection based on the combination of Bolnberger/Teder will be withdrawn pending the submission of the response to the Office Action mailed on December 4, 2004;
- (3) The finality of the Office Action mailed on December 4, 2004 will be withdrawn; and
- (4) The proposed amendment to claim 17, including a recitation of the arm having an end located within the housing and another end holding the mouthpiece, would be allowable pending an updated search.

Based at least on the above-summarized reasons and the agreement reached during the personal interview, Applicants respectfully submit that the above-noted rejections are now moot. Their withdrawal and withdrawal of the finality of the outstanding Office Action is respectfully requested.

Finally, Applicants have submitted new Claims 25-35, which find non-limiting support in the subject matter recited in Claims 10-24. Therefore, new Claims 25-35 are not

believed to raise a question of new matter.¹ Claim 25 recites an oxygen breathing mask, comprising, a flexible cap; an exhalation port pierced through the flexible cap; a housing disposed on the flexible cap, the housing being separate from the exhalation port; a body mounted in the housing; an arm extending from the body; a conical tubular mouth-piece supported by the arm; and a microphone capsule mounted at an end of the mouth-piece between the flexible cap and the mouth-piece. Claims 26-35 depend from Claim 25. Based at least on the above-noted arguments and the results of the personal interview, Applicants respectfully submit that Claim 25 patentably distinguish over all cited references of record. Claims 26-35 should be allowed at least in view of their dependency from Claim 25.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 10-35 is earnestly solicited.

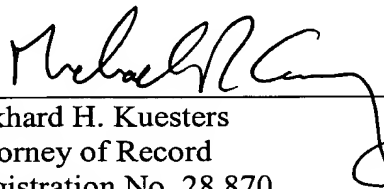
¹ See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

Application No. 09/831,899
Reply to Office Action of December 29, 2004

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representatives at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Attorney of Record
Registration No. 28,870

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Mardson Q. McQuay, Ph.D.
Registration No. 52,020

Michael R. Casey, Ph.D.
Registration No. 40,294